

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

RECEIVED

DEC - 9 2005

To: Office of the Secretary

Attn: The Honorable Richard L. Sippel
Chief Administrative Law Judge

Federal Communications Commission
Office of Secretary

**COMPLAINANTS' AND GULF POWER'S JOINT PROPOSED
PROCEDURE FOR FURTHER PROCEEDINGS AND HEARING**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, LLC ("Complainants"), and Gulf Power Company ("Gulf Power"), pursuant to this Court's Orders, FCC 05M-58 and FCC 05M-59 (Nov. 22, 2005), respectfully submit the following joint proposal for procedures regarding further proceedings and hearing.¹

PRELIMINARY STATEMENT

Complainants and Gulf Power contemplate the following revised procedures for conducting an evidentiary hearing in this case leading to Initial Decision(s) under the Commission's rules of

¹ The parties differ on some of the proposed provisions in this joint filing. Where the parties take different positions, brackets and italics will be used to briefly identify the differences.

No. of Copies rec'd 0 + 6
List A B C D E

practice.² As set forth in more detail below, Gulf Power will select a limited number of its utility poles that it contends satisfy the [Complainants propose adding: “*full capacity*” and “*lost opportunity*” / “*higher valued use*”; Gulf Power would delete this language] requirements discussed in *Alabama Power Co v. FCC*, 311 F.3d 1357, 1370-71, and will identify those poles and produce all related supporting documentation and backup for those poles (including all Osmose documents where applicable) upon which Gulf Power relies to support its contentions.

After Gulf Power has identified its group of poles, Complainants would then have the option of identifying an additional, similarly sized group of Gulf Power poles that Complainants contend are illustrative of poles that may or may not be at “full capacity.” If Complainants identify a group of such poles, Gulf Power will provide Complainants and the Commission with all of the supporting documentation and identifying information that it has relating to the poles identified by Complainants.

The parties would then have a period of time to complete fact discovery, exchange summaries and curriculum vitae of testifying experts, and take expert depositions. After the close of discovery, the parties would file their direct written testimony for all testifying witnesses and proposed exhibit lists, file pre-hearing briefs, and then proceed to hearing.

At the hearing, Gulf Power would have the burden to meet the *Alabama Power* standards [Complainants propose adding: of “*full capacity*” and “*lost opportunity*” / “*higher valued use*”; Gulf Power proposes to delete this language] as to each of the poles identified by Gulf Power. Gulf Power would also present its evidence regarding its claim for compensation [Complainants proposes adding: *greater than the marginal costs of its pole attachments*; Gulf Power proposes to delete this language] and the methodologies underlying this claim, and Complainants would present

² Gulf Power will comply with this Court’s directions, as reflected in the transcript of the November 21, 2005 Status Conference, to produce on December 9, 2005 maps identifying poles it believes are at “full capacity.” See Transcript (Nov. 21, 2005), pp. 102, 121.

their response. The Presiding Judge would then reach an Initial Decision [Complainants propose adding: *with respect to the evidence for the specific poles submitted at the hearing on the issue designated for hearing – whether Gulf Power is entitled to receive compensation above marginal costs for any attachments to its poles belonging to the Cable Operators, and, if so, the amount of any such compensation*”]; Gulf Power proposes deleting this and substituting: *based on this evidence*].

Following the Initial Decision, the procedures set forth in the Commission’s rules will apply, including the procedures that govern the taking of any appeal from the Initial Decision and the procedures for either the Initial Decision to become final or the Commission to take review and issue a final decision. See 47 C.F.R. §§ 1.271-1.282. If the final decision is adverse to Gulf Power [Complainants propose adding: *– i.e., that Gulf Power has not shown that it is entitled to compensation above its marginal costs for the specific poles identified at the hearing –*; Gulf Power proposes deleting this language], then there shall be no further proceedings before the Commission on this docket. If the final decision is in favor of Gulf Power [Complainants propose adding: *– i.e., that Gulf Power has shown that it is entitled to compensation above its marginal costs for some or all of the specific poles identified at the hearing and that Gulf Power has shown under applicable law that it is entitled to a particular amount of “just compensation” –*; Gulf Power proposes deleting this language], then the Presiding Judge, together with the parties, will establish procedures for Gulf Power to present evidence of other poles similar to those that were the subject of the first hearing and which it believes also meet the *Alabama Power* standards, and Complainants will have the opportunity to challenge such evidence. The parties will have a second hearing on any such evidence and the Presiding Judge will issue a second Initial Decision. The Commission’s rules will again apply, including the procedures that govern the taking of any appeal from the second Initial

Decision and the procedures for either the second Initial Decision to become final or the Commission to take review and issue a final decision.

SPECIFIC PROVISIONS

1. Gulf Power shall identify a limited number of its poles containing one or more of Complainants' attachments that are alleged to be at "full capacity" and for which it alleges that it satisfies the [Complainants propose adding: *"lost opportunity" / "higher valued use"*; Gulf Power proposes deleting this language] requirements in *Alabama Power*, not to exceed [Complainants propose: *twenty-five (25) poles*; Gulf Power proposes: *fifty (50) poles*], by January 20, 2006. Gulf Power's identification will be filed with the Commission and served on all parties, and will include all documents and other records upon which Gulf Power relies to support its contentions. [Complainants contend that Gulf Power's identification must include the following specific information, to the extent it has such information: *identification of the pole number and location (including nearest street address); any Gulf Power maps showing such poles; a color photograph of each pole; all documentation associated with the Osmose report pertaining to such poles; a statement of the reason(s) why Gulf Power contends each pole is at "full capacity" and why Gulf Power contends it has experienced a "lost opportunity" to put that pole to a "higher valued use"; the identification of all entities attached to each pole; the location above ground level of all attachments on each pole; the height, material, and date of installation in the ground of each pole; copies of all make-ready (including "change-out") documents involving each such pole; copies of any accounting and/or cost records relating to the identified poles; and all records upon which Gulf Power relies to support its claim of a lost opportunity as to such poles. In*

addition, Gulf Power will provide the Commission and Complainants with the evidence, as it pertains to the identified poles, underlying its claim to be entitled to a specific amount of compensation greater than the marginal costs of Complainants' pole attachments, the methodologies underlying its claim to such compensation, and the derivation of the specific dollar amount of such compensation; Gulf Power proposes deleting all of this language.]

2. By January 27, 2006, Complainants may, at their option, identify a limited number of additional Gulf Power poles containing one or more of Complainants' attachments, not to exceed [Complainants propose mirroring the number in paragraph 1: *twenty-five (25)*; Gulf Power proposes *fifty (50)*] poles, which Complainants contend may or may not [Complainants propose the following language: *be at "full capacity" and otherwise do or do not satisfy the Alabama Power "lost opportunity" / "higher valued use" requirements*; Gulf Power would delete this language and substitute *satisfy the requirements of Alabama Power*]. Complainants will provide identifying information, to the best of their abilities, regarding such additional poles, such as their location (including nearest street address), and a color photograph of each pole. Once Complainants have identified such poles, Gulf Power shall, by February 10, 2006, provide additional information to Complainants and the Commission about such poles, including, to the extent it is available, their Gulf Power pole numbers, all documentation associated with the Osmose report that is applicable to such poles; the identification of all entities attached to each pole; the location above ground level of all attachments on each pole; the height, material, and date of installation in the ground of each pole; copies of all make-ready (including "change-out") documents involving each such pole; copies

of any accounting and/or cost records relating to such poles; and all records and/or a statement upon which Gulf Power relies to support its claim of a lost opportunity as to such poles.

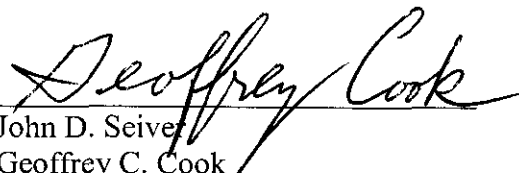
3. During January and February 2006, Complainants will agree to make one representative from each of the four Complainant cable operators available to Gulf Power for oral deposition, at a specific time and place to be agreed upon by counsel.³ Gulf Power reserves its right to demand additional discovery from Complainants, and Complainants reserve their right to oppose any such additional demands. Following the identification of poles by the parties in January, the parties will have until February 24, 2005 to complete fact discovery.
4. Expert Summaries and curriculum vitae will be filed on March 3, 2006, and expert depositions will be concluded by March 17, 2006.
5. The parties will exchange their written cases (i.e., pre-filed written testimony and proposed exhibit lists) by March 31, 2006.
6. Parties will notify witnesses of their intent to conduct cross-examinations and will submit hearing subpoenas (if needed) by April 7, 2006.
7. The Presiding Judge will conduct a document admission session on April 10, 2006 at 9:30 a.m.
8. Gulf Power will submit its Trial Brief by April 12, 2006.
9. Complainants will submit their Trial Brief by April 19, 2006.
10. Hearing will commence on April 24, 2006 at 9:30 a.m.

³ Complainants request that the Presiding Judge in fact hold the status conference referenced in FCC 05M-58 on Tuesday, December 20, 2005 to discuss these procedures and certain discovery issues.

Respectfully submitted,



J. Russell Campbell
Eric B. Langley
Nathan D. Chapman
BALCH & BINGHAM LLP
1710 Sixth Avenue North
Birmingham, AL 35203
(205) 251-8100



John D. Seiver
Geoffrey C. Cook
Rita Tewari
COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 659-9750

Ralph A. Peterson
Florida Bar No 303021
BEGGS & LANE LLP
501 Commendencia Street
Pensacola, FL 32502-5915
(850) 432-2451

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel
**FLORIDA CABLE TELECOMM.
ASSOCIATION, INC.**
310 North Monroe Street
Tallahassee, FL 32301
(850) 681-1990

Counsel for

GULF POWER COMPANY

Counsel for

**FLORIDA CABLE
TELECOMMUNICATIONS
ASSOCIATION, COX
COMMUNICATIONS GULF COAST,
L.L.C., COMCAST CABLEVISION
OF PANAMA CITY, INC.,
MEDIACOM SOUTHEAST, L.L.C.,
and BRIGHT HOUSE NETWORKS,
L.L.C.**

December 9, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complainants' and Gulf Power's Joint Proposed Procedure for Further Proceedings and Hearing* has been served upon the following by electronic mail and U.S. Mail on this the 9th day of December, 2005:

J. Russell Campbell
Eric B. Langley
Jennifer M. Buettner
BALCH & BINGHAM LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203-2015

Lisa Griffin
Federal Communications Commission
445 12th Street, S.W. – Room 5-C828
Washington, D.C. 20554

Ralph A. Peterson
BEGGS & LANE, LLP
501 Commendancia Street
Pensacola, Florida 32591

Sheila Parker
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

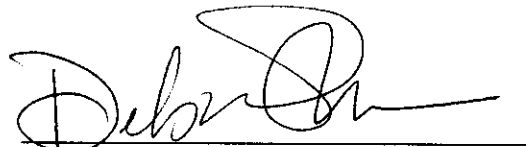
Rhonda Lien
Federal Communications Commission
445 12th Street, S.W. – Room 4-C266
Washington, D.C. 20554

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

James Shook
Federal Communications Commission
445 12th Street, S.W. – Room 4-A460
Washington, D.C. 20554

David H. Solomon
Federal Communications Commission
445 12th Street, S.W. – Room 7-C485
Washington, D.C. 20554

Jonathan Reel
Federal Communications Commission
445 12th Street, S.W. – Room 4-C261
Washington, D.C. 20554


Debra Sloan